

## **REMARKS**

### **Status of the Claims**

Prior to entry of this paper, Claims 1-30 were pending. Claims 1-30 were rejected. In this paper claims 1-3, 11-17, 23-25, and 29-30 are amended. No claims are canceled or added. After entry of this amendment, Claims 1-30 will be pending. For at least the following reasons, it is respectfully submitted that each of the presently pending claims is in condition for allowance.

### **Alleged non-functional descriptive material**

Applicants' representative notes that significant portions of the claims "have not been given any weight" for allegedly reciting non-functional descriptive material. In this response, Applicants' representative has made every effort to amend the claims in a way that even more clearly and directly recites the claimed invention. If the Examiner has any further comments along these lines, Applicants' representative respectfully requests a telephone interview to discuss them.

### **Claim Rejections – 35 U.S.C. § 103**

Claims 1-9, 11-18, 20-28, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh et al., U.S. Patent No. 7,231,358 (hereafter "Singh") in view of Davis et al., U.S. Patent No. 6,269,361 (hereafter "Davis"), and further in view of Internet Archives Way Back Machine printout of the [www.Go.Toast.com/pdf/GTpapershocs.asp](http://www.Go.Toast.com/pdf/GTpapershocs.asp) website from August 16, 2003 (hereafter "Go Toast").

Claims 10 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh in view of Davis, further in view of Go Toast, and further in view of McGregor, U.S. Publication No. 2002/0026360 (hereafter "McGregor").

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh in view of Davis, further in view of Go Toast, and further in view of Mason et al., U.S. Patent No. 6,401,075 (hereafter "Mason").

Claim 1 recites, in part (added text underlined):

using the selected method, calculating a plurality of bids for the keyword, each of the plurality of bids corresponding to one of a plurality of time periods within the time interval, the calculations based on:  
an estimated average cost per click of the keyword for each of the plurality of time periods within the time interval, inferred from historical cost per click data, and  
an actual number of clicks available for the keyword for each of the plurality of time periods within the time interval

Support for this amendment can be found throughout Applicants' specification as filed, including for example, page 10 lines 13-24 and Figure 6. In contrast, Singh discusses calculating bids based on actual real-time price data and historical click counts. For example, Singh sets up a flight using functions "current-bid" and "historical clicks",<sup>1</sup> where "historical-clicks uses historical data from the marketplace" and "current-bid returns the current bid of a term at a rank" (emphasis added).<sup>2</sup> However, Singh's historical clicks is historical, and thus has nothing to do with an actual number of clicks available, as recited. Also, Singh's current-bid reflects current market conditions, and thus has nothing to do with cost per click estimates inferred from historical cost per click data, as recited.

While it is true that once a flight has begun, Singh periodically adjusts bids based on current conditions, at no time does Singh teach calculating a bid based on an average cost per click inferred from historical cost per click data or based on an actual number of clicks available for a time period, as recited.

One non-limiting example of an actual number of clicks available for a time period can be found in Applicants' specification as filed in Figure 7, where the "clicks available" illustrates the number of clicks available for a given keyword during a given time interval for a given position (ranking). Applicants' representative respectfully submits that Figure 6 depicts

---

<sup>1</sup> See Singh col. 20 lines 50-60.

<sup>2</sup> See Singh col. 20 lines 18-21.

one example of using the “clicks available” data (array “c(k,i,j)”) when calculating bids for each keyword at each time interval.

Therefore, for at least these reasons, Singh fails to teach or suggest “using the selected method, calculating a plurality of bids for the keyword, each of the plurality of bids corresponding to one of a plurality of time periods within the time interval, the calculations based on: an estimated average cost per click of the keyword for each of the plurality of time periods within the time interval, inferred from historical cost per click data, and an actual number of clicks available for the keyword for each of the plurality of time periods within the time interval” as recited in amended Claim 1.

While Davis may discuss methods for influencing a position on a search result list, a review of Davis reveals that Davis also does not teach or suggest this limitation. Similarly, while Go Toast may discuss pricing based on time of day, this also does not cure the deficiencies of Singh. Therefore, even the proposed combination Singh, Davis, and GoToast fails to teach or suggest “using the selected method, calculating a plurality of bids for the keyword, each of the plurality of bids corresponding to one of a plurality of time periods within the time interval, the calculations based on: an estimated average cost per click of the keyword for each of the plurality of time periods within the time interval, inferred from historical cost per click data, and an actual number of clicks available for the keyword for each of the plurality of time periods within the time interval” as recited in amended Claim 1.

Independent **Claims 13, 17, 23, and 30** include limitations similar to, albeit different from, those discussed herein with respect to independent Claim 1. For at least similar reasons, the combination of Singh in view of Davis and Go Toast does not teach or suggest the limitations of these claims either. Accordingly, it is respectfully submitted that these claims are patentable over Singh in view of Davis and Go Toast, and withdrawal of the rejections to Claims 1, 13, 17, 23, and 30 under 35 U.S.C. § 103(a) is respectfully requested.

Dependent **Claims 2-12, 14-16, 18-22, and 24-29** respectively depended from independent base Claims 1, 13, 17, and 23. Thus, these dependent claims are not taught or suggested by any combination of Singh in view of Davis, Go Toast, Mason, or McGregor for at least similar reasons. Accordingly, withdrawal of the rejections to 2-12, 14-16, 18-22, and 24-29 under 35 U.S.C. § 103(a) is respectfully requested.

**CONCLUSION**

It is respectfully submitted that each of the presently pending claims (Claims 1-30) are now in condition for allowance and notification to that effect is requested. Examiner is invited to contact the Applicants' representative at the below-listed telephone number if it is believed that the prosecution of this application may be assisted thereby. Although only certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentable. Applicants reserve the right to raise these arguments in the future.

Dated: April 25, 2011

Respectfully submitted,

By: /David W. Foster/

David W. Foster

Registration No.: 60,902

FROMMER LAWRENCE & HAUG LLP

745 Fifth Avenue

New York, NY 10151

(206) 336-5672

(212) 588-0500 (fax)

Attorneys/Agents For Applicant